

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

ERICK DIAZ CRUZ, <i>Plaintiff,</i> v. HENRY V. SANTANA, Officer of U.S. Immigration and Customs Enforcement, <i>Defendant.</i>	No. 20 Civ. 891 (EK)(SJB) ANSWER
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ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANT HENRY V. SANTANA

Defendant Henry V. Santana, by and through his attorneys, Schlam Stone & Dolan LLP, answers the First Amended Complaint of Plaintiff Erick Diaz Cruz (the “Complaint”) as follows:

PRELIMINARY STATEMENT

1. Mr. Santana denies the allegations in the first sentence of paragraph 1 of the Complaint. Mr. Santana denies the allegations in the second sentence of paragraph 1 of the Complaint, and respectfully refers the Court to Plaintiff’s Complaint for a true statement of Plaintiff’s claims and demands for relief.

2. Mr. Santana denies knowledge or information sufficient to form a belief as to the truth of the allegations in the paragraph 2 of the Complaint, except denies the allegations in the second to last sentence of paragraph 2.

3. Mr. Santana denies the allegations in the first three sentences of paragraph 3 of the Complaint, and denies knowledge or information sufficient to form a belief as to the truth of the allegations in the remaining sentences of paragraph 3.

4. Mr. Santana denies the allegations in paragraph 4 of the Complaint, and

respectfully refers the Court to Plaintiff's Complaint for a true statement of Plaintiff's claims and demands for relief.

JURISDICTION AND VENUE

5. Mr. Santana denies knowledge or information sufficient to form a belief as to the allegations in the first sentence of paragraph 5 of the Complaint, and respectfully refers the Court to Plaintiff's Complaint for a true statement of Plaintiff's claims and legal theories. The last sentence in paragraph 5 state a legal conclusion to which no response is required. To the extent a response is required Mr. Santana admits the allegations in the last sentence of paragraph 5.

6. Paragraph 6 states a legal conclusion to which no response is required. To the extent a response is required, Mr. Santana admits the allegation in paragraph 6 of the Complaint.

PARTIES

7. Mr. Santana denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7 of the Complaint.

8. Mr. Santana denies the allegations in paragraph 8 of the Complaint, except admits that he is an employee of the Department of Homeland Security and works in the bureau of Immigration and Customs Enforcement.

9. Mr. Santana denies the allegations in paragraph 9 of the Complaint.

10. Paragraph 10 states a legal conclusion to which no response is required. To the extent a response is required, Mr. Santana admits the allegations in paragraph 10 of the Complaint.

11. Mr. Santana admits the allegations in paragraph 11 of the Complaint.

JURY DEMAND

12. Mr. Santana avers that no response is required to Plaintiff's jury demand.

FACTS

Mr. Diaz Cruz's Life Before the Shooting

13. Mr. Santana denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13 of the Complaint.

14. Mr. Santana denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14 of the Complaint.

15. Mr. Santana denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15 of the Complaint.

16. Mr. Santana denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16 of the Complaint.

17. Mr. Santana denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17 of the Complaint.

18. Mr. Santana denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18 of the Complaint.

19. Mr. Santana denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19 of the Complaint.

The Shooting

20. Mr. Santana denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20 of the Complaint.

21. Mr. Santana denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21 of the Complaint.

22. Mr. Santana denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22 of the Complaint.

23. Mr. Santana denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 23 of the Complaint.

24. Mr. Santana denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24 of the Complaint.

25. Mr. Santana denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25 of the Complaint.

26. Mr. Santana denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 26 of the Complaint.

27. Mr. Santana denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27 of the Complaint.

28. Mr. Santana denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28 of the Complaint.

29. Mr. Santana denies the allegations in paragraph 29 of the Complaint, except admits that at some point(s) during the events alleged in the Complaint the target ran away from Mr. Santana.

30. Mr. Santana denies the allegations in paragraph 30 of the Complaint, except admits that at some point during the events alleged in the Complaint he grabbed the target.

31. Mr. Santana denies the allegations in paragraph 31 of the Complaint.

32. Mr. Santana denies the allegations in paragraph 32 of the Complaint.

33. Mr. Santana denies the allegations in paragraph 33 of the Complaint, except admits that at some point(s) during the events alleged in the Complaint Plaintiff was standing on

the steps.

34. Mr. Santana denies the allegations in paragraph 34 of the Complaint, except admits that at some point(s) during the events alleged in the Complaint Plaintiff had his back to the house.

35. Mr. Santana denies the allegations in paragraph 35 of the Complaint.

36. Mr. Santana denies the allegations in paragraph 36 of the Complaint.

37. Mr. Santana denies knowledge or information sufficient to form a belief as to the allegations in paragraph 37 of the Complaint.

38. Mr. Santana denies knowledge or information sufficient to form a belief as to the allegations in paragraph 38 of the Complaint.

39. Mr. Santana denies the allegations in paragraph 39 of the Complaint, except admits that he fired a gun in the course of the events alleged in the Complaint.

40. Mr. Santana denies the allegations in paragraph 40 of the Complaint.

41. Mr. Santana denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 41 of the Complaint.

42. Mr. Santana denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 42 of the Complaint.

43. Mr. Santana denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 43 of the Complaint.

44. Mr. Santana denies the allegations in paragraph 44 of the Complaint.

45. Mr. Santana denies the allegations in paragraph 45 of the Complaint.

46. Mr. Santana denies the allegations in paragraph 46 of the Complaint.

47. Mr. Santana denies the allegations in paragraph 47 of the Complaint.

48. Mr. Santana denies the allegations in paragraph 48 of the Complaint.

49. Mr. Santana denies the allegations in paragraph 49 of the Complaint.

50. Paragraph 50 states a legal conclusion to which no response is required. To the extent a response is required, Mr. Santana admits the allegations in paragraph 50 of the Complaint.

51. Mr. Santana denies the allegations in paragraph 51 of the Complaint.

52. Mr. Santana denies the allegations in paragraph 52 of the Complaint.

53. Mr. Santana admits the allegations in paragraph 53 of the Complaint.

Harm Suffered by Plaintiff Because of Defendant's Actions

54. Mr. Santana denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 54 of the Complaint.

55. Mr. Santana denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 55 of the Complaint.

56. Mr. Santana denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 56 of the Complaint.

57. Mr. Santana denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 57 of the Complaint.

58. Mr. Santana denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 58 of the Complaint.

59. Mr. Santana denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 59 of the Complaint.

60. Mr. Santana denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 60 of the Complaint.

61. Mr. Santana denies knowledge or information sufficient to form a belief as to

the truth of the allegations in paragraph 61 of the Complaint.

62. Mr. Santana denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 62 of the Complaint.

63. Mr. Santana denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 63 of the Complaint.

64. Mr. Santana denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 64 of the Complaint.

65. Mr. Santana denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 65 of the Complaint.

66. Mr. Santana denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 66 of the Complaint.

67. Mr. Santana denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 67 of the Complaint.

68. Mr. Santana denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 68 of the Complaint.

69. Paragraph 69 states a legal conclusion to which no response is required. To the extent a response is required, Mr. Santana denies the allegations in paragraph 69 of the Complaint.

70. Mr. Santana denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 70 of the Complaint.

71. Mr. Santana denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 71 of the Complaint.

CAUSES OF ACTION

CLAIM ONE
VIOLATION OF THE FOURTH AMENDMENT

72. Mr. Santana repeats and incorporates his responses to foregoing paragraphs of the Complaint as if fully set forth herein.

73. Mr. Santana denies the allegations in paragraph 73 of the Complaint.

74. Mr. Santana denies the allegations of paragraph 74 of the Complaint.

75. Mr. Santana denies the allegations of paragraph 75 of the Complaint.

CLAIM TWO
VIOLATION OF THE FIFTH AMENDMENT

76. Mr. Santana repeats and incorporates his responses to foregoing paragraphs of the Complaint as if fully set forth herein.

77. Mr. Santana denies the allegations in paragraph 77 of the Complaint.

78. Mr. Santana denies the allegations of paragraph 78 of the Complaint.

79. Mr. Santana denies the allegations of paragraph 79 of the Complaint.

ADDITIONAL CLAIMS

80. Mr. Santana denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 80 of the Complaint.

RELIEF

81. Paragraph 81 contains a prayer for relief to which no response is required. To the extent a response is required, Mr. Santana denies that Plaintiff is entitled to the relief sought in paragraph 81 of the Complaint, or any relief.

82. Paragraph 82 contains a prayer for relief to which no response is required. To the extent a response is required, Mr. Santana denies that Plaintiff is entitled to the relief sought in

paragraph 82 of the Complaint, or any relief.

83. Paragraph 83 contains a prayer for relief to which no response is required. To the extent a response is required, Mr. Santana denies that Plaintiff is entitled to the relief sought in paragraph 83 of the Complaint, or any relief.

84. Paragraph 84 contains a prayer for relief to which no response is required. To the extent a response is required, Mr. Santana denies that Plaintiff is entitled to the relief sought in paragraph 84 of the Complaint, or any relief.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Mr. Santana has not violated any of Plaintiff's rights, privileges, or immunities under the Constitution or laws of the United States.

THIRD AFFIRMATIVE DEFENSE

Mr. Santana is entitled to qualified immunity.

FOURTH AFFIRMATIVE DEFENSE

To the extent that any force was used, such force was reasonable, necessary, and justified.

JURY DEMAND

Mr. Santana demands a trial by jury on all issues triable as of right by a jury.

WHEREFORE, Defendant Henry V. Santana demands judgment dismissing the Complaint in its entirety together with such other relief as the Court may deem just and proper.

Dated: New York, New York
September 21, 2020

Respectfully submitted,

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Attorneys for Defendant Henry V. Santana

TO: (by ECF filing)
All Counsel Who Have Appeared